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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 246

WADELMIRO ARROYO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

Opinion Below

The opinion of the Court of Appeals (R. 267-72) is reported at 256 F.2d 549.

Jurisdiction

The judgment of the Court of Appeals was entered on June 25, 1958 (R. 273). On July 24, 1958, by order of Mr. Justice Frankfurter, the time within which to file a petition for a writ of certiorari was extended to August 4, 1958

(R. 275). The petition was filed August 1, 1958, and was granted October 13, 1958. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

Questions Presented

Sections 302(b) and (d) of the Taft-Hartley Act, so-called, make it a federal crime " . . . for any representative of any employees . . . to receive or accept . . . from the employer of such employees any money or other thing of value." Section 302(c) provides that (b) "shall not be applicable . . . (3) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees . . . " The principal questions presented by this petition are—

1. Whether petitioner could properly be convicted under §302 for receiving money from an employer on the strength of evidence of subsequent misappropriation of such money originally paid to and deposited in the name of a union welfare fund?

2. Whether there was not a fatal variance between an indictment and particulars stating that the money or other thing of value received by petitioner consisted of two specified checks delivered on a certain day and subsequent proof of and reliance on petitioner's withdrawal from a bank account of a variety of sums over a period of two months?

Statute Involved

Section 302 of the Labor Management Relations Act, 1947, 61 Stat. 157, also popularly known as the Taft-Hartley Act, 29 U.S.C. §186.

The full text of Section 302 is printed in the Appendix hereto (pp. 19-21, *infra*).

Statement of the Case

The petitioner was indicted in the United States District Court for the District of Puerto Rico on January 26, 1955, and charged with having received money from employers, "on or about February 24, 1953" in the form of "a sum of money in the amount of fifteen thousand dollars," in violation of §§302(b) and (d) of the Labor Management Relations Act (R. 3-4). On petitioner's motion for a bill of particulars, under Criminal Rule 7(f), the United States Attorney stated that the "$15,000 was received in two checks of $7,500.00 each" issued by the designated employers "on February 21, 1953" (R. 10). Petitioner was tried by jury, convicted and sentenced to imprisonment for nine months and to pay a fine of $2,000.00 (R. 2). The Court of Appeals affirmed the conviction (R. 273). Petitioner is presently at liberty under bond.

It was agreed that petitioner was for some years the President and principal bargaining agent of the "Union de Trabajadores de Factoria, Refineria y Ramas Anexas de le Industrial z Azucorera, Local 1781, Afiliada a la I. L. A." (hereinafter called the Union), that the Union was the bargaining agent for appropriate units of employees of two allied corporations—Central Mercedita, Inc., and Puerto Rican Sugar Refinery, Inc. (hereinafter called the Employers), and that the Employers were engaged in the production of sugar for movement in interstate commerce (R. 43, 205-07).

The government introduced evidence to the following effect:

On February 21, 1953, the Union and the Employers, after a bargaining session in which the petitioner was the chief

negotiator for the Union, entered into a collective bargaining agreement for the years 1953-1955 (R. 44, 46). Article (6) of that agreement (R. 26) provided for the establishment of a welfare fund, that the Employers should contribute $15,000 to the fund to provide medical care, hospitalization, etc. for the workers and their families and dependents, and that the fund was to be administered by a committee to be appointed by agreement between the Union and the Employers.

Two checks in the amount of $7,500.00 each and payable to the Union (R. 27, 29) bearing dates of February 21, 1953, were delivered by the Employers to the petitioner (R. 46, 165, 172). Each check so made out had a voucher attached showing that it represented the Employers' contribution to the welfare fund (R. 28, 31, 173).[1]

On February 24, 1953, the checks, as subsequently endorsed by the petitioner and one Luis Silvagnoli, secretary of the Union (R. 114, 27, 29) were deposited by the petitioner in the National City Bank in Ponce (R. 67) in an account in the name of the Union specifically designated as a Welfare Fund ("Plan de Beneficencia") (R. 77). A welfare fund for these employees had first been established in 1951 or 1952 (R. 52, 58) with a deposit in the Banco de Ponce in 1952 (R. 51, 60).[2]

On or about March 2, 1953, a Union resolution signed by several officers[3] was delivered to the National City Bank

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[1] E.g. "covering: Welfare Fund for the year 1953 in accordance with contract signed on Feb. 21, 1953" (R. 28, 30, 31).

[2] As to the prior fund, the practice had been to have checks for benefits signed by the petitioner and countersigned by the employer representative (R. 52).

[3] There was a conflict of testimony between the government and defense witnesses as to whether one of the purported signers had in fact signed (R. 114-115, 166), but not as to the other signatories (R. 115, 117, 166).

which authorized petitioner to draw against the account over his signature, only (R. 113, 67, 68).

The government then put on, over objection, several witnesses (R. 76, 95), to withdrawals by petitioner, the first of which was almost three weeks after the deposit (i.e., on March 16, 1953 (R. 76)), for other than welfare fund purposes.

On March 26, 1953, petitioner closed out the account in the National City Bank and deposited the balance in another bank in the name of the Union (R. 68-69, 79). Additional witnesses to withdrawals by the petitioner from this fund, as late as mid-April, 1953 (R. 88) were presented by the government and testified over objection (R. 83, 87-88, 91, 97-98).

The District Court in overruling petitioner's several motions for judgment of acquittal (R. 159, 192-193, 261) and the Circuit Court in affirming, both rejected petitioner's contention that the only relevant evidence showed no receipt by him from the employers, but only a payment and deposit to and in the name of a prescribed welfare fund within the specific exemption of §302(c)(5); and that the evidence of subsequent unauthorized abstractions was improperly admitted, and could only result in petitioner's conviction for the crime of embezzlement which was not embraced within §302. Both Courts rationalized the introduction of such evidence (on a variety of theories, *Argument, post*) and held that, on the basis thereof, the petitioner could be found to have received money "from the employer" in violation of the statute.

Summary of Argument

The petitioner's conviction under §302 of the Taft-Hartley Act for receiving money from an employer cannot be sustained on the record in this case.

1. The legislative history shows that §§302(a) and (b) were directed against bribery and extortion, and that insofar as welfare funds were concerned, the objective of §302 was to prescribe standards for their establishment and joint administration. That these provisions did not embrace misappropriations and abstractions of union monies is particularly shown by the express legislative concern of the last (85th) Congress with such activities.

Since it is undisputed that there was no bribery or extortion here and that the money in question was paid by the employer and deposited by the Union in the name of a welfare fund (a payment exempted from §302),[4] no violation was made out.

Even if the evidence of petitioner's subsequent unauthorized withdrawals from the fund account was properly admitted, the novel "constructive receipt" theory of the government based thereon only resulted in Arroyo's conviction under §302, in all substance, for embezzlement, a crime not covered by that section. Such a distortion of the statute cannot be sustained under established principles of strict construction of criminal statutes.

2. In any event, the evidence of petitioner's subsequent misuse of the fund monies (concededly essential to conviction), constituting as it did highly prejudicial evidence of alleged commission of other (non-Federal) crimes, was not properly admitted. The various government theories on

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[4] The evidence on this point (produced by the government) fell directly within the language of the exemption (§302(c)(5)): "with respect to money or other thing of value *paid to a trust fund established by such representative* . . ." (Emphasis added.)

The Employers' efforts to participate in the administration of the fund at all relevant times (R. 51, 53, 110-111) confirms the existence of a fund within the §302(c)(5) exemption. In addition, the government conceded that, on the evidence, the Employers had bona fide made payments for the purposes of the exemption, and that no case could be made out against them (R. 132, 157).

this point are not tenable: the prosecution does not have the burden of negativing the exceptions to a statute. Since the crime was *malum prohibitum*, admission to show intent was unnecessary; and on the issue of control of the fund the evidence was merely cumulative.

3. Finally, even if petitioner could be convicted under §302 on this evidence, there was in this case a fatal variance between the indictment which, as modified by the particulars, alleged that the crime consisted in the receipt on February 24, 1953 of two specific checks, and the proof which confronted Arroyo with evidence of a number of transactions over several months.

ARGUMENT

I. The Legislative History Demonstrates That §302 Was Not Properly Applied to the Conduct Shown by the Government's Evidence.

This court, only three years ago, analyzed much of the materials on the legislative intent at the time of enactment of §302. In *United States* v. *Ryan*, 350 U.S. 299 (1956), the court said (pp. 304-06):

> "In 1946 Congress was disturbed by the demands of certain unions that the employers contribute to 'welfare funds' which were in the sole control of the union or its officers and could be used as the individual officers saw fit. The United Mine Workers' demand that mine operators create a welfare fund for the union by contributing 10 cents for each ton of coal mined, caused the Congress to act. . . . *Nor* . . . (was) Congress . . . *aiming solely at the welfare fund problem* . . . As passed by the House of Representatives, the Hartley *Bill* forbade employer contributions to union welfare funds, and *made it an unfair labor practice to give*

> *favors to 'any person in a position of trust in a labor organization . . .'* H. R. 3020, 80th Cong., 1st Sess., §8(a)(2). The scope of this *bill was enlarged when it reached the Senate to include,* in the words of Senator Taft, *a 'case where the union representative is shaking down the employer . . .'* 93 Cong. Rec. 4746."

The Conference Committee Report (House Report No. 510, June 3, 1947, p. 67) indicates that §302 was aimed, as much as anything else, at exerting a degree of control and regulation over welfare funds and the compulsory check-off of union dues ("the two most important exceptions"—*ibid.*).

The foregoing sources show that §302 was aimed overtly at bribery (ordinarily, but not invariably, of union representatives) and extortion (ordinarily, from employers) with important supplemental objectives of preventing the accumulation of massive and uncontrolled financial power in unions from welfare funds (and dues check-offs).[5]

Both the Court of Appeals (R. 270) and the District Court (R. 49, 89, 236 (charge to jury)) ruled the conduct of petitioner, of which there was evidence, in withdrawing monies from an established fund for personal use, was within the sweep of §302, by ascribing a far broader purpose to the section than the legislative materials sustain. To do so, both courts relied solely on a misconstruction of an observation of this Court in *Ryan, supra.* In saying (*ibid.*, p. 304) that Congress was disturbed by union demands that employers contribute to funds which were "in the sole control of the union or its officers and could be

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[5] The contemporaneous analysis, by a well-known writer on labor law, of the objective of §302 was that it sought to limit the power derived by unions from such funds by the imposition of various standards such as joint administration with employers. Cox, *The Labor Management Relations Act*, 61 Harv. L. Rev. 274, 289-91 (1947-48).

used as the individual officers saw fit," the Court in no way intended to suggest that Congress was concerned with or aiming at the problem of misappropriations and abstractions from such funds for personal benefit, as the entire statement of *Ryan* (quoted above) reveals. That such an interpretation of that one sentence was improper is shown by the immediately-following example (of the United Mine Workers), given by Mr. Justice Clark. It was not suggested then that Mine Workers officials were pilfering their well-known fund; rather, the Congressional concern was over the power to use these great amounts for broad (but non-welfare) union purposes (i.e., for strike funds or political campaigns).[6]

That the wholly distinct problem of embezzlement and misuse of such funds once created in accordance with the standards prescribed in §302, was not intended to be reached by that section is convincingly shown by the recent expressed Congressional concern over those very activities. Thus, the last (85th) Congress enacted the Welfare and Pension Plans Disclosure Act, 85th Cong., P.L. 836, 72 Stat. 997, designed, as the committee report shows (Senate Report No. 1440), to attempt to curb maladministration of such funds by disclosure and publicity. In addition, that Congress considered (and the Senate passed) legislation (the Kennedy-Ives bill) expressly making it a federal crime to abstract monies from such accounts (S. 3974; cf. Sen. Rep. No. 1684, pp. 1, 3, 16).[7]

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[6] See *Cox, op. cit., supra.*

[7] Sec. 109 (a) of S. 3974 (passed by the Senate June 17, 1958) read: "Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or the use of another any of the moneys, funds, securities, property, or other assets of an organization which is exempt from taxation under Section 501 (a) of the Internal Revenue Code of 1954 of which he is an officer or by whom he is employed directly or indirectly shall be fined

The fact that Congress has subsequently found it necessary to legislate expressly against conduct of the sort which the government principally relies on for conviction here is the strongest indication that §302 does not and was not intended by Congress to cover the facts of this case. *Bailey, Collector* v. *Clark, et al.*, 21 Wall. (88 U.S.) 284, 288 (1874); 2 Sutherland, *Statutory Construction* (3d ed.) §5110.

The government contends that the payments to and in the name of a welfare fund notwithstanding, a receipt by petitioner from employers under §302(b) is made out on the evidence, principally that of the subsequent withdrawals. Accepting for purposes of this argument under Point I that such evidence was properly admitted (as it was not, Points II, III, *post*), it is submitted that such a receipt was *not* shown by this evidence. While, as noted (Point II, 1., *infra*), the government's theories of the case varied considerably, it is assumed that they came down to the proposition that, although the employer paid and the union deposited the $15,000 to and in the name of an *exempted* welfare account, Arroyo's intent and/or power over the monies (as shown by the aforesaid evidence) was such that, in effect, he received the money personally the instant it went into the bank. *That* is not a case within §302(b).

In the first place, both courts relied, as noted above, for their ruling that such evidence made out a case within the scope of the statute, on a wholly erroneous construction of this Court's statement in *Ryan*. And they ignored the prior

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not more than $10,000, or imprisoned for not more than five years, or both."

Sen. Rep. No. 1684 (to S. 3974) expressly states the Congressional understanding that §302 (a) and (b) were limited to extortion or bribery (p. 16): "Section 608 of the committee bill strengthens Section 302 . . . by making it applicable to all forms of extortion and bribery . . . Although these provisions of existing law would punish most forms of bribery or extortion . . ."

and subsequent legislative history showing that subsections (a) and (b) of §302 were directed only at bribery and extortion and, insofar as welfare funds were concerned, not at cases of personal profiteering from or maladministration thereof.[8]

Such a doctrine of "constructive receipt," concededly being novel (R. 20, 36, 39-40), represents an unduly broad construction of a criminal statute.

> *United States* v. *Wiltberger*, 5 Wheat. 76, 95-96 (1820) (Marshall, *C.J.*);
> *Viereck* v. *United States*, 318 U.S. 236, 245 (1943).

> "Nor are they to be held guilty of offenses which the statutes have omitted, though by inadvertence, to define and condemn. For the courts are without authority to repress evil save as the law has proscribed it and then only according to law."[9]

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[8] Petitioner's view of the intended scope of §302 (a), (b), insofar as those sections relate to this case, may be expressed another way: the only acts (of payment and receipt) they render criminal are those possessing the element of mutuality, i.e., no one is bribed or the victim of extortion unknowingly, even though he may be relatively guiltless. Since it is established on the record that the employers' payments were proper, bona fide payments for a welfare fund and not a subterfuge (R. 132, 157; f.n. 4, p. 6), petitioner's unilateral conduct cannot bring the case within the Act.

[9] §302 has been given contrasting and, we submit, properly constrained construction by two other circuits (on different issues). *United Marine Division* v. *Essex Transportation Co.*, 216 F.2d 410, 413 (3rd Cir. 1954) (employer's oral promise to pay trustees not barred by §302 (a), (b) as not made to a "representative"); *Ventimiglia* v. *United States*, 242 F.2d 620, 623-24 (4th Cir. 1957) (payment to union organizer for refraining from organizing defendant's employees not a payment to a representative of its employees). The statement of this court in *United States* v. *Ryan*, 350 U.S. 299, 304 that "representative" should not be given a narrow construction, certainly a commonsensical result, is hardly to be read as a call for the sweeping reading to the whole statute made below.

That this constructive receipt theory constitutes an unwarrantably broad construction of the statute is shown by several considerations apart from its novelty. Even if the admission of the evidence on a Sec. 302(b) case be rationalized, it is obvious that, in all substance, the jury was presented, and based its verdict on, what was essentially a case of embezzlement. This is strongly indicated by the fact that, although the indictment (as particularized) alleged only receipt of two checks for $7,500 each on February 24, 1953, seventy-five percent of the government's case (eight witnesses (R. 66-123)) was directed to the issue of subsequent withdrawals and expenditures, while only one witness (R. 42-66) was called to testify concerning the payment and receipt. Most of the former testimony was in essence cumulative.[10]

Again, this theory proves too much. If a proscribed receipt from an employer, on February 24, can be established primarily on the strength of misuse of welfare fund monies over a period of two months later, then there is no logical reason why such a crime cannot be retroactively established at any date. Since employer payments to such funds are made periodically, any abstraction from a fund within six months (or a year) after such a payment, could, on the theory of this case, make out a "receipt" from the employer; all cases of misappropriations and embezzlements would be brought within §302(b) and the extended legislation and concern of the 85th Congress with those questions would have been completely unnecessary.

An additional indication that the statute was improperly construed arises from the fact that the crime is *malum prohibitum*. *United States* v. *Ryan*, 350 U.S. 299, 305 (1956). It is a characteristic of such offenses that they consist of

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[10] All of this evidence of withdrawals amounted to only $1,500-$2,000 of the $15,000 which petitioner was charged with receiving (R. 222).

such clear, definite, unmistakable acts, carrying with them in common experience so great a likelihood of undesirable social consequences, that proof of intent may be dispensed with. *United States* v. *Balint*, 258 U.S. 250, 252-53 (1922); *Commonwealth* v. *Mixer*, 207 Mass. 141; *Commonwealth* v. *Smith*, 166 Mass. 370, 375 (Holmes, *J.*). Here, by contrast, the conduct of February 24, 1953 condemned was of such an amorphous imprecise character that its criminality is established only in the context of events in the ensuing two months.

In sum, the legislative history shows that insofar as the statute deals with the administration of welfare funds it is with aspects unrelated to petitioner's conduct here. Novel and ingenious constructions of a criminal statute, sweeping wide categories of offenses within the scope of the section (cf. *Grunewald* v. *United States*, 353 U.S. 391, 404 (1957)) should not be countenanced especially where such result interferes with deliberate, extensive, and as yet uncompleted Congressional consideration of the very problems.[11]

II. The Evidence of Subsequent Misuse of the Fund Was Not Properly Admitted Under Section 302.

Without that evidence, the government had no case, as both courts below recognized (R. 145, 148-9; R. 271). The various theories for its admission which the government advanced were untenable.

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[11] Thus, not only has the chairman of committee which produced S. 3974 indicated his intention to re-introduce the bill in the next Congress (Report of speech by Senator McClellan, Boston Daily Globe, November 12, 1958, p. 5, cols. 7-8), but the Welfare and Pension Funds Disclosure Act, 85th Cong. P.L. 836, 72 Stat. 997 expressly provides (Sec. 10(b)) that nothing therein shall exempt or relieve liability under "any present *or future law of the United States* affecting the operation . . . of (such) plans" and also contemplates Congressional re-examination of the whole question in four years (Sen. Rep. No. 1440).

1. At least three separate and distinct theories to justify the admission of such evidence have been suggested at various points: (a) that the government had to negative the exceptions to the statute (R. 9, 41, 49, 73); (b) that the evidence showed petitioner's control over the fund was such that he, in effect, received the $15,000 at the instant of deposit in the bank (R. 71, 94, 148, 199); this was the view of the Court of Appeals (R. 271); (c) a theory, adverted to in the trial court (R. 191) but not in the court below, but again advanced in this court (Brief in Opposition to Petition, p. 6), that the evidence showed petitioner's intent to be such at the time of delivery of the checks that he then received the money (R. 188, 192). In addition, the government advanced another proposition which, ignoring the indictment and particulars, did not rely on receipt of the checks at all but, treating those as "mere orders for payment," hypothecated an indirect receipt at the time of the actual subsequent withdrawals (R. 185, 193, 199).

It is submitted that the inability of the government to formulate a coherent, consistent theory of its case is additional persuasive indication of a stretching of the statute beyond endurance.

In any event, the theories were untenable. It must be kept in mind that the evidence of this type, constituting as it did highly prejudicial evidence of other alleged crimes, is not admitted unless its essentiality to prove an element of the crime charged outweighs its tendency for prejudice and other probative difficulties.

> *United States* v. *Krulewitch*, 145 F.2d 76, 80 (2d Cir., 1944). (L. Hand, *J.*)

2. The government does not have the burden of negativing the exceptions to a criminal statute either with respect

to the allegations of the indictment or the proof at the trial.[12]

Edwards v. *United States*, 312 U.S. 473, 483 (1941);
United States v. *Krepper*, 159 F.2d 958, 968 (3rd Cir., 1946), cert. den. 330 U.S. 824 (1947);
United States v. *Holmes*, 187 F.2d 222, 225 (7th Cir., 1951), cert. den. 341 U.S. 948 (1951).

3. Since the crime was *malum prohibitum* only (*Ryan*, *supra* at p. 305), the government did not have to establish intent (R. 16), and a highly contrived theory by which an element which is traditionally unnecessary becomes an essential ingredient of the crime cannot justify the resultant prejudice.

4. Admission to show "control" of the fund is not warranted since the evidence was not essential but merely cumulative on this point. There was in the case ample showing of control of the fund in the testimony as to the union resolution permitting withdrawals on Arroyo's sole signature and his express request of the union members that he be permitted to withdraw without the necessity for countersignature.

That the foregoing theories of admissibility should not be endorsed receives additional support from the principles of construction of criminal statutes already set out herein (Point I, *supra*).[13]

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[12] Indeed a ruling to that very effect, at least as to the indictment, had been made by this same District Court of Puerto Rico in a §302 case, just before the instant indictment was returned. *United States* v. *Waterman Dock Co.*, 131 F.Supp. 956 (D.C.P.R. 1955).

[13] It cannot be argued that the statutory scheme shows an intention to have the validity of payments to a welfare fund depend on subsequent events merely because the statute sets out certain

III. In Any Event, There Was a Fatal Variance Between an Indictment (as Particularized) for Receipt of Two Checks on a Day Certain and Proof of and Reliance on Receipt of a Variety of Sums Over Two Months.

This question is fairly comprised within the question presented in the petition for certiorari;[14] in any event, it constitutes plain error on the record.

As the statement recites, the prosecution, on petitioner's motion for particulars to the allegation in the indictment that defendant received "fifteen thousand dollars" on "February 24, 1953," stated that it consisted of two checks of $7,500 dated February 21, 1953 (R. 10). At the trial, as repeatedly developed above, the government presented and relied primarily on, the numerous witnesses to events after February 24 and through mid-April 1953.

It is submitted that such procedure constituted a variance affecting the substantial rights of petitioner within the meaning of Fed. Crim. Rule 52. *Kotteakos* v. *United States*, 328 U.S. 750, 766-67 (1946).[15] As was said in *Kotteakos* (p. 767), with respect to a variance between a charge of a single broad conspiracy and proof of a number of individual conspiracies, the burden on a defendant who pre-

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requirements (annual audit, filing reports, providing for arbitration in case of deadlock), which cannot be complied with until time has passed. A proper reading must be that, as far as criminal sanctions are concerned, the legality of a payment to a fund under subsections (b), (c), and (d) depends on the circumstances of and surrounding the payment, whereas the sanction for subsequent violation of the other regulatory provisions is not retroactive criminality, but equitable enforcement as expressly provided for in subsection (e).

[14] Which, broadly read, challenged, *inter alia*, the validity of petitioner's conviction under §302 (for receiving) on the strength of the aforesaid evidence.

[15] *Kotteakos* dealt with former section 269 of the Judicial Code (28 U.S.C. §391) which was repealed in the 1946 revision, in view of its duplication by Rule 52.

pares to meet a charge of criminality with respect to a single transaction and is confronted with a number of transactions is considerable and, when he has been misled on the point, prejudicial.

Conclusion

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed and the case remanded with directions to enter a judgment of acquittal or, at the least, grant a new trial.

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APPENDIX

Sec. 302(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: PROVIDED, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or for such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): PROVIDED, That (A) such payments are held in trust for the purpose of

paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or, in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other place as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a *misdemeanor* and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

(e) The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the

provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of sections 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., title 29, secs. 101-115).

(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.